

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ERIN M. STINES,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL,  
INC., et al.,

Defendants.

C16-848 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion to compel, docket no. 14, is GRANTED in part and DENIED in part as follows:

(i) As to Request for Production No. 3 requesting the "entire personnel file" of Henry Hamilton, plaintiff's motion is DENIED as moot.

(ii) As to Request for Production No. 4, requesting the "entire payroll file" for Henry Hamilton, plaintiff's motion is GRANTED in part. Defendants shall produce any "Transfer: Review" documents for Henry Hamilton. Except as granted, plaintiff's motion with respect to Request for Production No. 4 is DENIED. Defendant has produced a document showing the salaries, raises, and bonuses received by attorneys Henry Hamilton, Matthew Cleverly, and Daniel Womac that contains sufficient information for plaintiff to discern any discrepancies between their compensation and the compensation of similarly situated female employees. The "Payroll Professional" records likely contain social security numbers and financial institution information, as well as other sensitive personal information, such as contributions to a retirement or

1 health savings account, which are both entitled to protection and unrelated  
2 to plaintiff's claims. Plaintiff has not shown that the "raw data" contained  
3 in these records has any relevance to her claim that she received less  
4 compensation because of her gender.

5 (iii) As to Request for Production No. 5, requesting the "entire personnel  
6 file" of Matthew Cleverly, plaintiff's motion is DENIED as moot.

7 (iv) As to Request for Production No. 6, requesting the "entire payroll  
8 file" for Matthew Cleverly, plaintiff's motion is GRANTED in part.  
9 Defendants shall produce any "Transfer: Review" documents for Matthew  
10 Cleverly. For the reasons discussed in section (ii) above, except as granted,  
11 plaintiff's motion with respect to Request for Production No. 6 is DENIED.

12 (v) As to Request for Production No. 7, requesting the "entire personnel  
13 file" for Dan Womac, plaintiff's motion is DENIED as moot.

14 (vi) As to Request for Production No. 8, requesting the "entire payroll  
15 file" for Dan Womac, plaintiff's motion is GRANTED in part. Defendants  
16 shall produce any "Transfer: Review" documents for Daniel Womac. For  
17 the reasons discussed in section (ii) above, except as granted, plaintiff's  
18 motion with respect to Request for Production No. 8 is DENIED.

19 (vii) As to Requests for Production Nos. 9 and 10, requesting the "entire"  
20 personnel and payroll files for Tom Larkin, plaintiff's motion is  
21 GRANTED in part. Defendants shall produce Tom Larkin's personnel file  
22 and any "Transfer: Review" documents for the time period between  
23 September 20, 2010, when Mr. Larkin was hired, and May of 2011, when  
he was promoted to Managing Attorney. Defendants shall additionally  
provide to plaintiff, in a format similar to the one used in Exhibit A, docket  
no. 26, Mr. Larkin's annual salary and any bonus amounts and raises he  
received during the same time period. Except as granted, plaintiff's motion  
with respect to Requests for Production Nos. 9 and 10 is DENIED.

(viii) As to Requests for Production Nos. 11 and 12, requesting the  
"entire" personnel and payroll files for Janis White, plaintiff's motion is  
GRANTED in part. "[E]vidence from non-party personnel files, such as  
the position, disciplinary records, wages, and promotion history of  
employees *both inside and outside the protected class*, has been held to  
constitute discoverable comparator evidence." *See Lauer v. Longevity  
Medical Clinic PLLC*, No. C13-0860-JCC, 2014 WL 5471983, \*5 (W.D.  
Wash. Oct. 28, 2014) (emphasis added). Defendants shall produce the  
personnel file and any "Transfer: Review" documents for Janis White.  
Defendants shall additionally provide to plaintiff, in a format similar to the  
one used in Exhibit A, docket no. 26, Ms. White's annual salary and any

1 bonus amounts and raises she received during the time period plaintiff was  
2 employed by defendant Fidelity National Title Group, Inc. Except as  
3 granted, plaintiff's motion with respect to Requests for Production Nos. 11  
4 and 12 is DENIED.

5 (ix) As to Requests for Production Nos. 13 and 14, requesting the  
6 "entire" personnel and payroll files for Mark Phelps, plaintiff's motion is  
7 GRANTED in part. Defendants shall produce the personnel file and any  
8 "Transfer: Review" documents for Mr. Phelps for any time period(s) in  
9 which he served in the same Trial Counsel position as plaintiff. Defendants  
10 shall additionally provide to plaintiff, in a format similar to the one used in  
11 Exhibit A, docket no. 26, Mr. Phelps's annual salary and any bonus  
12 amounts and raises during the same time period(s). Except as granted,  
13 plaintiff's motion with respect to Requests for Production Nos. 13 and 14 is  
14 DENIED.

15 (x) As to Requests for Production Nos. 15 and 16, requesting the  
16 "entire" personnel and payroll files for Peter Wolff, plaintiff's motion is  
17 DENIED.

18 (xi) As to Requests for Production Nos. 27 and 28, requesting the  
19 "entire" personnel and payroll files for Joe Tucker, plaintiff's motion is  
20 DENIED.

21 (xii) As to Request for Production No. 29, requesting the "entire"  
22 personnel file for Melissa Mack, plaintiff's motion is DENIED.

23 (xiii) As to Request for Production No. 30, requesting "past or current job  
descriptions for all attorney positions within the Seattle office of Fidelity  
National Title Group," plaintiff's motion is DENIED without prejudice.  
Defendants have represented that they have undertaken a good faith search  
for attorney job descriptions and have located none. In the event that any  
such job description is identified, defendants have represented that its  
response to Request for Production No. 30 will be supplemented.

(xiv) As to Request for Production No. 31, requesting "resumes,  
employment applications, employment contracts, job titles, and wage and  
bonus histories" for Henry Hamilton, plaintiff's motion is GRANTED in  
part. Defendants shall produce any employment applications and resumes  
for Henry Hamilton. Except as granted, plaintiff's motion with respect to  
Request for Production No. 31 is DENIED as moot.

(xv) As to Request for Production No. 32, requesting "resumes,  
employment applications, employment contracts, job titles, and wage and  
bonus histories" for Matthew Cleverly, plaintiff's motion is GRANTED in

1 part. Defendants shall produce any employment applications and resumes  
2 for Matthew Cleverly. Except as granted, plaintiff's motion with respect to  
Request for Production No. 32 is DENIED as moot.

3 (xvi) As to Request for Production No. 33, requesting "resumes,  
4 employment applications, employment contracts, job titles, and wage and  
bonus histories" for Dan Womac, plaintiff's motion is GRANTED in part.  
5 Defendants shall produce any resumes for Daniel Womac. Except as  
granted, plaintiff's motion with respect to Request for Production No. 33 is  
6 DENIED as moot.

7 (xvii) As to Request for Production No. 34, requesting "resumes,  
8 employment applications, employment contracts, job titles, and wage and  
bonus histories" for Janis White, plaintiff's motion is GRANTED.  
9 Defendants shall produce any resumes, employment applications,  
employment contracts, and job titles for Ms. White. With regard to the  
10 requested wage and bonus histories, defendants shall produce this  
information pursuant to the Court's ruling concerning Requests for  
Production No. 11 and 12, *see* section (viii).

11 (xviii) As to Request for Production No. 35, requesting "resumes,  
12 employment applications, employment contracts, job titles, and wage and  
bonus histories" for Tom Larkin, plaintiff's motion is GRANTED in part.  
13 Defendants shall produce any resumes, employment applications,  
employment contracts, and job titles for Tom Larkin during the time period  
14 from when he was hired on September 20, 2010, until he was promoted to  
Managing Attorney in May of 2011. Defendants shall produce Mr.  
15 Larkin's wage and bonus history pursuant to the Court's ruling concerning  
Requests for Production Nos. 9 and 10, *see* Section (vii). Except as  
16 granted, plaintiff's motion with respect to Request for Production No. 35, is  
DENIED.

17 (xix) As to Request for Production No. 36, requesting "resumes,  
18 employment applications, employment contracts, job titles, and wage and  
bonus histories" for Peter Wolff, plaintiff's motion is DENIED.

19 (xx) As to Request for Production No. 37, requesting "resumes,  
20 employment applications, employment contracts, job titles, and wage and  
bonus histories" for Mark Phelps, plaintiff's motion is GRANTED in part.  
21 Defendants shall produce any resumes and employment applications for  
Mark Phelps. Defendants shall additionally produce employment contracts,  
22 job titles, and wage and bonus history for any period(s) in which he served  
in the same Trial Counsel position as plaintiff. Wage and bonus histories  
23 shall be produced pursuant to the Court's ruling concerning Requests for

1 Production Nos. 15 and 16, *see* Section (ix). Except as granted, plaintiff's  
2 motion with respect to Request for Production No. 36 is DENIED.

3 (xxi) As to Request for Production No. 38, requesting "written  
4 performance evaluations" of all "attorney employees who have ever worked  
5 in the Seattle office of Fidelity National Title Group, Inc.," plaintiff's  
6 motion is GRANTED in part. To the extent not already produced,  
7 defendants shall produce performance evaluations for attorneys Harry  
8 Hamilton, Matthew Cleverly, Daniel Womac, and Janis White. Defendants  
9 shall additionally produce performance evaluations for Tom Larkin and  
10 Mark Phelps for any time periods in which they served in the same Trial  
11 Counsel position as plaintiff. Except as granted, plaintiff's motion with  
12 respect to Request for Production No. 38 is DENIED.

13 (xxii) As to Request for Production No. 39, requesting "written  
14 performance evaluations . . . of all paralegal, legal assistant, and legal  
15 secretary employees who have ever worked in the Seattle office of Fidelity  
16 National Title Group, Inc.," plaintiff's motion is DENIED.

17 (xxiii) As to Request for Production No. 40, requesting documents  
18 reflecting the "productivity of any of the attorney employees who have ever  
19 worked in the Seattle office of Fidelity National Title Group, Inc.,"  
20 plaintiff's motion is GRANTED in part. Defendants shall produce any  
21 non-privileged documents responsive to Request for Production No. 40 that  
22 form the basis of their affirmative defense that "[a]ny alleged pay disparity  
23 between plaintiff and other employees was the result of bona fide factors  
other than sex." Answer, docket no. 11, pg. 28-29 (Affirmative Defense  
No. 7). Defendants shall produce a privilege log for any documents for  
which a privilege is claimed. Except as granted, plaintiff's motion with  
respect to Request for Production No. 40 is DENIED.

(xxiv) As to Request for Production No. 41, requesting all "complaints,  
grievances, or charges brought during the past seven years by any female  
employee of Fidelity National Title Group, Inc.," concerning "gender  
discrimination, disparate treatment on the basis of sex, sexual harassment, a  
hostile workplace, or any violation of the state or federal Equal Pay Act,"  
plaintiff's motion is GRANTED in part. Defendants shall produce all non-  
privileged documents relating to complaints, grievances, or charges,  
including informal complaints and internal grievances, brought by female  
attorney employees in the Seattle office of defendant Fidelity National Title  
Group, Inc. alleging gender discrimination or harassment, or violation of  
the state or federal Equal Pay Act during the period of plaintiff's  
employment. Defendants shall additionally produce all non-privileged  
documents relating to complaints, grievances, or charges, including  
informal complaints and internal grievances, brought by female attorney

1 employees who worked in any of Fidelity National Title Group, Inc.'s  
2 offices in the United States, alleging that defendant Jay Levitch engaged or  
3 participated in gender discrimination or harassment, or violation of the state  
4 or federal Equal Pay Act during the period of plaintiff's employment.  
Defendants shall produce a privilege log for any documents for which a  
privilege is claimed. Except as granted, plaintiff's motion with respect to  
Request for Production No. 41 is DENIED.

5 (xxv) As to Request for Production No. 42, requesting "any disciplinary  
6 warnings given to, or any disciplinary action taken against, any employee  
7 of the Seattle office of FNTG, during the past seven years," plaintiff's  
8 motion is GRANTED in part. Defendants shall produce any documents  
9 reflecting any disciplinary warnings given to, or any disciplinary action  
10 taken against Janis White during the time period plaintiff was employed by  
11 Fidelity National Title Group, Inc. Defendants shall additionally produce  
any documents reflecting any disciplinary warnings given to, or any  
disciplinary action taken against Tom Larkin or Mark Phelps for any  
period(s) during which they served in the same Trial Counsel position as  
plaintiff. As to disciplinary notices or documents concerning Harry  
Hamilton, Matthew Cleverly, and Daniel Womac plaintiff's motion is  
DENIED as moot. Plaintiff's motion with respect to Request for  
Production No. 42 is otherwise DENIED.

12 (xxvi) As to Requests for Production Nos. 43, 44, 45, 46, 47, 48, and 49,  
13 plaintiff's motion is DENIED as moot. Defendants have apparently  
14 produced all non-privileged documents written by or sent to Patrick  
15 Mortimer, Joe Tucker, Joe Reinhardt, Raymond Quirk, Jay Levitch, and  
16 Melissa Mack between April 1, 2015, and November 1, 2015, which  
mention or discuss plaintiff. *See* Decl. of Katie Rosen, docket no. 21, Exs.  
B and D. Defendants shall produce a privilege log for any documents for  
which a privilege is claimed.

17 (xxvii) As to Request for Production No. 50, plaintiff's motion is  
18 GRANTED in part. Defendants shall produce any and all documents  
19 related to any "inappropriate comments" which form the basis of  
20 defendants' contention that plaintiff was fired, in part, due to "inappropriate  
21 comments to and about her co-workers." *See* Answer, docket no. 11 at  
¶ 4.78. Except as granted, plaintiff's motion with respect to Request for  
Production No. 50 is DENIED.

22 (xxviii) As to Request for Production No. 53, plaintiff's motion is  
23 DENIED.

(2) Defendants are ADVISED that the Court may preclude any reliance on  
evidence at issue in this motion that defendants did not produce in discovery.



1 (3) The Court declines to award fees to either party.

2 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
3 record.

4 Dated this 27th day of March, 2017.

5 William M. McCool  
6 Clerk

7 s/Karen Dews  
8 Deputy Clerk